72-1733

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Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1972

No. 72-1733

CHRISTOPHER JOSEPH MUSSER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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IN THE

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CHRISTOPHER JOSEPH MUSSER,

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UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner Christopher Joseph Musser respectfully prays that a Writ of Certiorari issue to review the judgment herein of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on May 2, 1973.

OPINION BELOW

The opinion of the Court of Appeals for the Ninth Circuit is not yet reported but is set forth in Appendix A. It affirmed petitioner's Judgment of Conviction for failing to submit to induction into the Armed Forces of the United States in violation of 50 App. U.S.C. §462(a). Petitioner was tried by the court in the District Court on December 20, 1971, and on January 6, 1972 he was found guilty as charged. There is no written opinion of that court.

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on May 2, 1973. On June 1, 1973 Justice Douglas signed an order extending the time for the filing of a petition for certiorari to and includ-

ing June 22, 1973.

QUESTIONS PRESENTED FOR REVIEW

I Whether petitioner's local draft board deprived him of his right to Due Process of Law as guaranteed in the United States Constitution by considering his post-induction order claim to conscientious objector status on the merits, as shown by its finding that the claim lacked sincerity, and by characterizing their denial of that claim as a refusal to reopen his classification, thereby denying him his administrative rights attendant to a classification decision?

II Whether the course of conduct taken by petitioner's draft board in denying his post-induction notice claim to conscientious objector status on a finding of insincerity, together with

the applicable Selective Service and Army regulations would have permitted the Army to reject his claim for in-service conscientious objector status, thereby placing him in a "no man's land" and denying him the rights to Due Process of Law guaranteed him by the United States Constitution.

CONSTITUTIONAL PROVISION INVOLVED

Fifth Amendment

No person shall . . . be deprived of life, liberty or property without due process of law . . .

STATUTES & REGULATIONS INVOLVED

The regulations involved are Selective Service Regulations, part 1625, 32 C.F.R. 1625.2, 1625.4, 1625.11-12-13-14. Because these provisions are lengthy, their pertinent text is set forth as Appendix B. Also involved are

Army Regulation 635-20, effective August 15, 1970, and Department of Defense Directive No. 1300.6, effective May 10, 1968. Because the provisions of these regulations are lengthy, the pertinent portions of the texts are set forth in Appendices C and D, respectively.

STATEMENT OF THE CASE

On December 5, 1967, defendant, appellant and petitioner (hereinafter referred to as petitioner) registered with Local Board No. 25, Marin County, San Rafael, California. On February 25, 1970, petitioner was classified 1-A by Local Board No. 25 and on September 15, 1970, petitioner was ordered to report for induction into the Armed Forces on October 14, 1970. On September 21, 1970, petitioner requested and received

a Special Form for Conscientious Objector. At that time petitioner was told by a secretary at Local Board No. 25 that the Form would be considered if it was returned within a certain period of time. On September 28, 1970, the completed Form was returned by petitioner to Local Board No. 25. On September 29, 1970, the Local Board met and considered petitioner's claim to conscientious objector status. The summary of that meeting of the Local Board shows that:

> "Local Board reviewed registrant's completed claim. It was their determination that the claim lacked sincerity. Registrant must report for induction."

The entry in the Minutes of Action by Local Board and Appeal Board and on Appeal to the President for September

29, 1970 states:

"Completed claim reviewed. Claim lacks sincerity."

Nevertheless, on September 29, 1970, the Local Board advised Petitioner that it had not reopened his classification and had not reclassified him and that he must report for induction. On December 21, 1970, the Local Board advised petitioner of his continuing duty to report and ordered him to report for induction on January 19, 1971. On January 19, 1971, petitioner reported for induction but refused to submit to induction.

REASONS FOR GRANTING THE WRIT

IN HOLDING THAT LOCAL BOARD CONSIDERATION OF THE MERITS OF PETITIONER'S POST-INDUCTION CONSCIENTIOUS OBJECTOR CLAIM DID NOT CONSTITUTE A DE FACTO RE-

OPENING AND WOULD NOT AFFECT HIS RIGHT TO IN-SERVICE RELIEF, THE NINTH CIRCUIT PLACED PETITIONER SQUARELY WITHIN A "NO MAN'S LAND" THAT THE SUPREME COURT HAS ALREADY STATED WAS "INTOLERABLE" AND HAS REACHED A DECISION ON IMPORTANT LEGAL ISSUES DIRECTLY CONTRARY TO DECISIONS IN OTHER CIRCUITS.

The case presented here by petitioner involves a claim for conscientious objector status first made after the issuance of an order to report for induction, the consideration given to that claim by the local draft board, and the effect of that consideration upon the constitutional rights of petitioner. Petitioner has contended throughout these proceedings that his local draft board, while purporting not to reopen his classification, made an evaluative

determination on the merits of the claim, as shown by its findings of insincerity, and that this action denied petitioner the procedural rights attendant to a classification decision and would have prevented him from receiving a hearing on that claim had he chosen to submit to induction. The opinion of the majority in the Ninth Circuit does not dispute the fact that petitioner's claim was actually decided upon its merits; rather, it holds that there can be no de facto reopening of the classification and that since the local board was powerless to act, anything done " . . . on the merits of Musser's conscientious objection had no validity, force, or effect" (United States v. Musser, ___ F.2d ____, [9th Cir., May 2, 1973] Appendix A at page 27.

The issues raised by petitioner in his appeal to the Ninth Circuit and in this petition have been considered by other trial courts and by other Courts of Appeals and the result has been directly conflicting holdings. Where the Ninth Circuit in Musser, supra, says:

> "Had Musser been inducted and had he made an in-service claim to conscientious objector status no presumption that the local board evaluated and denied that claim could have been made." (Appendix A at page 27)

the Third Circuit in United States v. Ziskowski, 465 F.2d 480 (3d Cir. 1972) on virtually identical facts, said:

> "Thus, even assuming that at the

"time that Ziskowski would have been inducted the Army would have construed the above quoted AR 630-20, ¶3b(2), to bar only those conscientious objector claims that had been denied by the Selective Service System on the merits (not a necessary assumption in view of the rather ambiguous language of the regulation),[12] the Army might reasonably have construed the board's action as precluding consideration of Ziskowski's conscientious objector claim in the Army.[13]" (485) (footnotes omitted)

Thus, while the Seventh Circuit[1] concurs with the Ninth Circuit, the First Circuit[2] and the Third Circuit[3] and trial courts in the Second Circuit[4], Sixth Circuit[5] and Eighth Circuit[6] have held

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1. Wright v. Ingold, 445 F.2d 109 (7th Cir. 1971) and United States v. Waldron, ___ F.2d ___ (7th Cir. February 8, 1973); petition for cert. filed ____ U.S.L.W. ___ (U.S. May 14, 1972)(No. 72-6748)

2. United States v. Alioto, 469 F.2d 722 (1st Cir. 1972)

3. United States v. Shomock, 462 F.2d 338 (3rd Cir. 1972) and United States v. Ziskowski, 465 F.2d, 480 (3rd Cir. 1972)

4. United States v. Cotton, 346 F.Supp. 691 (S.D.N.Y. 1972) and United States v. Usdin, 6 SSLR 3039 (E.D.N.Y. December 21, 1972)

5. United States v. Takala, 5 SSLR 3773 (E.D.Mich. September 11, 1972)

6. United States v. England, 348 F.Supp. 851 (W.D.Mo. 1971)

that convictions cannot be sustained where the local board considered or, because the reasons for its refusal to reopen a classification were unelaborated, may have considered post-induction order claims for conscientious objector status on their merits.

The primary consequence of the action taken by petitioner's draft board in evaluating the merits of petitioner's post-induction notice claim was to place petitioner suarely within the "no man's land" which this court described as "intolerable" in Ehlert v. United States, 402 U.S. 99 (1971). In that decision, this Court held that a local board acted within its authority when it refused to give any consideration to a post-induction notice claim of conscientious objection. In that

decision, the Court held the door open for review of a case such as the case at bar where it states that its holding is based upon the assurances it received from the Army that conscientious objector claims crystallizing between the date of issuance of induction notice and the date of induction would be heard in the Army under the applicable Army regulations. The court said:

> "For if . . . a situation should arise in which neither the local board nor the military had made available a full opportunity to present a prima facia conscientious objector claim under established criteria, . . . a wholly different case would be presented." (107)

This is that "wholly different

case" and the questions it raises are equally as worthy of resolution by this Court as were those raised in Ehlert v. U.S., supra. Where the Court in Ehlert was concerned with a situation arising under Army Regulation 635-20, 3.b.(1) effective August 15, 1970 (Appendix C at page 36), any claim to in-service relief made by Musser would have been governed by §3.b.(2)of that same Army regulation and by Department of Defense Directive No. 1300.6, §IV(B)(2) (See Appendix D at page 37). Army Regulation 635-20, 3.b.(2) in effect at the time of petitioner's refusal to submit to induction provides in part that in-service claims for conscientous objector status will not be favorably considered when:

"(2) Based solely on conscientious objection claimed

"and denied by the Selective Service System prior to induction."

As noted above, the Ninth Circuit treated the local board's decision, based upon their finding of insincerity, as being on the merits in arriving at its decision. In United States v. Shomock, supra, the court set forth in full a copy of a letter dated February 9, 1972 from the Office of the General Counsel, Department of the Army, to the prosecuting attorney, which stated:

"If the appellant had entered the Army in May 1969 under circumstances where the Selective Service System actually considered and denied his conscientious objector claim on the merits, he would not have been

"entitled to an in-service determination on the merits of his conscientious objector claim." (345)

In Baker v. Laird, 316 F.Supp. 1 (N.D. Cal. 1970) the court noted that AR 635-20, 3.b.(2) precluded a personnel separation for persons whose views were fixed prior to active service, who had made claims for conscientious objector status based upon those views and who had had those claims denied by their draft boards upon their merits. The potential for prejudice under AR 635-20, 3.b.(2) is at least as great as that arising under AR 635-20, 3.b.(1) as illustrated by the situation of petitioner who, sought only the guaranty of a full and complete hearing on his claim and who, was forced to refuse to submit

to induction because he and his attorney, like the First and Third Circuits later, viewed the draft board's action as constituting a Selective Service determination of that claim and the applicable Army regulations as precluding in-service relief. In a virtually idential situation in United States v. Usdin, supra, the court granted a motion to dismiss:

> " . . . because every registrant claiming conscientious objector status must somewhere, sometime have the opportunity to fully present his claim for determination under established criteria. Furthermore, he must be assured in advance that such an opportunity will be afforded him . . . . The defendantwas plac-

"ed in a 'catch 22' situation. His local board had deprived him of an opportunity to present his claim by acting illegally and it is likely that the military would have refused a post-induction hearing on the grounds the merits of the claim had already been decided by the local board. The Supreme Court has termed such a no man's land 'intolerable' . . ." (3041)

As in Usdin, supra, petitioner was placed in the position of having his draft board consider the merits of the claim without having the procedural rights attendant to such consideration, and yet, by virtue of that consideration, being precluded from raising that claim

after induction into the Army. Petitioner submits to this Court that a regulatory scheme that is as vague and uncertain as is the combination of Selective Service regulations and Army regulations here in question and which could work, in a case such as this, to deny a registrant his right to a forum where his lately crystallized conscientous objector claim could be fairly determined, constitutes a denial of due process.

Implicit in the decision of the Ninth Circuit in this case and explicit in the decision of the Seventh Circuit in United States v. Waldron, supra, is the idea that a registrant in the position of petitioner should have submitted to induction and, if denied in-service relief on the grounds that his local board had given him his full hearing,

avail himself of habeas corpus. This reasoning ignores Estep v. United States, 327 U.S. 114 (1946) which holds that a registrant may refuse induction and seek judicial review of the acts of his local draft board in criminal proceedings and need not submit to induction and then proceed under habeas corpus. This reasoning also ignores the very practical problem which a registrant would face by submitting to induction. Should a registrant submit to induction and bring habeas corpus proceedings when denied an in-service forum, he would be faced with the argument that his claim had been heard on the merits by his draft board and that if he felt that that hearing was procedurally inadequate, his remedy was to then refuse induction and test the propriety of his draft board's

conduct in criminal proceedings. It was this dilemma that petitioner had to confront at the time of his decision to refuse to submit to induction and it is submitted that when a draft board's actions, combined with the relevant Selective Service and Army regulations can place a registrant in the position of having to make such an election and, if he is wrong, being denied not only his right to have his claim for conscientious objection heard but also his right to have a judicial determination of the propriety of those actions which resulted in his inability to have a forum for his conscientious objector claim, the very heart of the registrant's constitutional rights have been violated.

The Court's attention is directed to United States v. Waldron, supra, in

which a petition for certiorari was filed with this Court on May 14, 1973 raising the propriety of the Seventh Circuit's holding in a situation very much like that in the case at bar. The issues raised by the Waldron petition and in the case at bar bear directly upon the resolution of a large number of cases now pending throughout the country. One indication of the large number of such cases is the fact that seven reported cases, previously cited in footnotes to this petition, have been handed down within the past year. The Justice Department has indicated that there will be no "amnesty" for draft cases now pending before the courts and, with the current backlog of Selective Service cases, the courts in virtually every circuit will be forced to choose either

the rule announced by the Seventh and Ninth Circuits or the rule adopted by the First and Third Circuits and by trial courts in the Second, Sixth and Eighth Circuits. In view of the importance of the questions presented and the number of cases in which these questions will be determinative, it is requested that this Court grant certiorari so that the outcome in the cases presenting these issues may be determined on some basis other than the chance of geography.

CONCLUSION

For the reasons aforesaid, it is respectfully prayed that a Writ of Certiorari be granted to review the judgment of the United States Court of Ap-

peals for the Ninth Circuit.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
vs.
CHRISTOPHER JOSEPH MUSSER,
Defendant-Appellant.
No. 72-1276

[May 2, 1973]

Appeal from the United States District Court
for the Northern District of California

Before: HUFSTEDLER and CHOY, Circuit Judges, and SMITH,* District Judge.

PER CURIAM:

Defendant appeals his conviction of refusing to submit to induction (50 U.S.C. App. § 462(a)). An induction order issued September 15, 1970, ordered defendant to report on October 14, 1970. On September 21, 1970, defendant requested and received the special form for conscientious objectors which he returned to the local board on September 28, 1970. The board reviewed the claim, determined that it lacked sincerity, refused to reclassify defendant,[1] and advised defendant that he must report for induction.

It is now claimed that the board did in fact consider the claim on the merits and in fact reopened the classification, and that having done so the board could not label its action as a refusal to

*The Honorable Russell E. Smith, Chief Judge of the United States District Court for the District of Montana, sitting by designation.

[1]The local board's minutes stated: "C.O. claim reviewed under section 625.2 SSR and classification not reopened." And the form letter notice to Musser said that his classification was not reopened because there had not been a change in status resulting from circumstances over which he had no control.

reopen and thus cut off defendant's rights to appear, be heard, and appeal. Defendant relies upon *Miller v. United States,* 388 F.2d 973 (9th Cir. 1967).

32 C.F.R. § 1625.2 provides that a classification "shall not be reopened" after the induction order is mailed unless the board "first specifically finds there has been a change in the registrant's status resulting from circumstances over which the registrant had no control." The language is mandatory. The board lacks power to reopen in the absence of the required finding. *United States v. Stupke,* 451 F.2d 997 (9th Cir. 1971); *United States v. Hand,* 443 F.2d 826 (9th Cir. 1971). A local draft board lacking power to formally reopen cannot accomplish a de facto reopening. *United States v. Nix,* 437 F.2d 746 (9th Cir. 1971). *Miller v. United States, supra,* is not contrary. In that case the State Director, acting within his authority, had ordered the local board to reconsider.

Had Musser been inducted and had he made an in-service claim to conscientious objector status no presumption that the local board evaluated and denied that claim could have been drawn. The board was powerless to reopen the classification. Anything the board recorded in its minutes or did on the merits of Musser's conscientious objection had no validity, force, or effect.

Affirmed.

HUFSTEDLER, Circuit Judge (dissenting):

I recognize that a conflict in the circuits now exists on this question and that authorities in some of the circuits support the majority's view.[1] This conflict has been engendered by differing interpretations of the Supreme Court's decision in *Ehlert v. United States* (1971) 402 U.S. 99. I read *Ehlert,* as do the First and Third Circuits, as requiring that every conscientious objector applicant has meaningful opportunity for at least one full and fair administrative determination of his conscientious objector claim and that the registrant cannot be relegated to a " 'no man's

[1] *See* United States v. Waldron (7th Cir. Feb. 8, 1973) ..... F.2d .....; *cf.* Swift v. Director of Selective Service (D.C. Cir. 1971) 448 F.2d 1147; Wright v. Ingold (7th Cir. 1971) 445 F.2d 109.

land'" where his claim will never be administratively reviewed.[2] *See United States v. Alioto* (1st Cir. 1972) 469 F.2d 722; *United States v. Ziskowski* (3rd Cir. 1972) 465 F.2d 480; *United States v. Shomock* (3rd Cir. 1972) 462 F.2d 338; *see also United States v. Usdin* (E.D.N.Y. Dec. 21, 1972) 6 SSLR 3039; *United States v. Cotton* (S.D.N.Y. 1972) 346 F. Supp. 691; *United States v. Takala* (E.D.Mich., Sept. 11, 1972) 5 SSLR 3773.

Judge Coffin's opinion in *Alioto* eloquently expresses my own views on the correct interpretation of *Ehlert*. That reading would compel a reversal of this conviction for the *Ehlert* "'no man's land'" script exactly fits Musser.[3] Under the pertinent Selective

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[2]"That those whose views are late in crystallizing can be required to wait [to present their claims after induction], however, does not mean that they can be deprived of a full and fair opportunity to present the merits of their conscientious objector claims for consideration under the same substantive criteria that must guide the Selective Service System. See *Welsh v. United States*, 398 U.S. 333. . . . It would be wholly arbitrary to deny the late crystallizer a full opportunity to obtain a determination on the merits of his claim to exemption from combatant training and service just because his conscientious scruples took shape during a brief period in legal limbo.[7]

"[7]Since such a 'no man's land' would be intolerable our decision today simply involves settling in which forum late crystallizers must have an opportunity for a ruling on the merits. Whether they may have such an opportunity at all cannot be open to question. . . ." 402 U.S. at 103-04.

[3]Following a I-A classification by his local board on February 25, 1970, appellant was ordered on September 15, 1970, to report for induction into the armed forces on October 14, 1970. On September 21, 1970, he requested and received an SSS Form 150 for conscientious objectors. The board members reviewed his claim on September 29, 1970. A summary of that meeting by the board's executive secretary indicates that:

"The local board reviewed registrant's complete claim. It was their determination that the claim lacks sincerity. Registrant must report for induction."

The local board minutes for that date bear the following handwritten entry: "Complete claim reviewed. Claim lacks sincerity." In addition, a barely legible stamped entry states that the "c.o. claim reviewed under section 1625.2 SSR and classification not reopened." On the same day of its meeting, the local board notified appellant by form letter that it had not reopened his classification:

"This will acknowledge receipt of your communication relative to your selective service status. The information contained therein has

Service regulations and case law, the local board could not simultaneously make an evaluative determination that his claim lacked sincerity and not reopen his classification.[4] I am also convinced that the local board's contradictory and ambiguous characterizations of its actions could have foreclosed appellant from an in-service forum for his conscientious objector claim. *See United States v. Usdin, supra.* Finally, were I to search the record to find a basis-in-fact for the local board's finding of appellant's insincerity, I would be compelled to conclude that the board's determination is wholly insupportable.[5]

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been considered by this board and you are hereby advised it did not specifically find there has been a change in status resulting from circumstances over which you had no control. In its opinion, the reopening or reclassification of your case is therefore not warranted."

[4]Under certain circumstances a local board's handling of a registrant's request for a reopening and reclassification can constitute a constructive or de facto reopening of his classification, despite the board's characterization of its action as a denial of the reopening request. *E.g.*, United States v. Foster (9th Cir. 1971) 439 F.2d 29; Miller v. United States (9th Cir. 1967) 388 F.2d 973. Since Musser presented a prima facie case for conscientious objector status (*see* note 5 *infra*), any determination whether he was actually a conscientious objector could be evaluatively decided only through the normal processes and provisions of the regulations for considering and ascertaining classifications. The board's own records clearly demonstrate that appellant's claim was thoroughly reviewed. Only after this complete investigation did the board conclude the claim lacked sincerity. If the board did reopen and reconsider Musser's request, he was denied the important procedural rights of a personal appearance and appeal conferred by 32 C.F.R. § 1625.13. Mulloy v. United States (1970) 398 U.S. 410, 417-18. The order to report for induction was accordingly invalid, and Musser's conviction for refusing to submit should be reversed.

[5]As the Supreme Court has most recently observed:

"In order to qualify for classification as a conscientious objector, a registrant must satisfy three basic tests. He must show that he is conscientiously opposed to war in any form. *Gillette v. United States*, 401 U.S. 437. He must show that this opposition is based upon religious training and belief, as the term has been construed in our decisions. *United States v. Seeger*, 380 U.S. 163; *Welsh v. United States*, 398 U.S. 333. And he must show that this objection is sincere. *Witmer v. United States*, 348 U.S. 375." Clay v. United

States (1971) 403 U.S. 698, 700; *see also* United States v. McKinley (9th Cir. 1971) 447 F.2d 962.

In his representations to the board, appellant manifested those deeply held scruples against killing customarily associated with conscientious objection. He signed Statement B of Series I of Special Form for Conscientious Objector (SSS Form 150):

"I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form and I am further conscientiously opposed to participation in noncombatant training and service in the Armed Forces. I, therefore, claim exemption from combatant and noncombatant training and service in the Armed Forces, but am prepared to perform civilian alternative service if called. Registrants granted this status are classified I-O."

Commenting on the source of religious training and belief that formed the basis of his claim, Musser indicated as follows:

"Parents & family strongly Roman Catholic. Catechism (Our Lady of Loretto Parish, Novato Ca.) until the age of 12 (weekly) Confirmed at 12 yrs. active member of C.Y.O. with close relationship with Parish Priests. Public school education (Novato) Close friend of family—Father Thomas Reilly; profound influence until College age. Member Newman Club, College of Marin. Influenced by the writings of Bertrand Russel [*sic*] of which I have read almost everything."

In his attached statement amplifying his views, Musser set out in great detail the underlying reasons for his convictions and the genesis of his beliefs:

"The nature of my belief in the sacredness of human life arises out of my religious training, and is a product of that training and the observations I have made concerning the relationship between people, and between people and their god.

"I believe in God in the Christian (Roman Catholic) sense—as an outward, affecting omnipresent being; and that Jesus Christ was the son of God, manifesting himself in human form for the purpose of communicating consciously with men on earth.

"However I also believe that God is within you ('The Kingdom of God is within you') and can only be truly understood by inward reflection on the knowledge that is attained in the world outside the body.

"It is this inward reflection that has brought me, spontaneously, to the realization that the spiritual life of the individual is primary; indeed it is the main purpose for living—and all else (on a purely religious level) in this life, is either meant to develop or retard the spiritual growth of men, depending on their capacity to recognize the truth and act upon it. ('For what does a man have if he should gain the whole world, but lose his own soul?')

"It is also this reflection (or belief), which I realize now would not allow me to participate in *any* war for the reason that I might

be compelled, either by outside authority or animal instinct, to take the life of a person who by virtue of his wisdom could enrich my spiritual life considerably.

"These beliefs stem directly from my religious training. Questions 1 & 2, standard Catholic Catechism:

1. Who made us? Ans. God made us
2. Why did God make us? Ans. God made us to know, love and serve him that one day we might enter the kingdom of Heaven.

"In the end it is Jesus Christ who [*sic*] I believe we must look to, as Christians and as human beings, for an example to follow. Being a good Christian means being *as much in his image* as possible. Though it would be academic to argue whether Jesus would have let himself be drafted or not, the fact is that he never was. The fact is that when he was nailed to the cross, with all the power of the universe at his command, he only said 'Forgive them Lord, for they know not what they do.'.

"These beliefs may appear to be the result of a process of thinking that could not have developed in the short time since I have received my notice of Induction. Actually, I never could have written this down for the purpose for which it is intended without receiving my notice. At that time the thoughts that had been brewing in my subconscious for so long were suddenly confronted with the reality that exists—that I could be called upon to kill another man for the beliefs that other people hold. I realize now that this is something I could not do."

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APPENDIX B

32 C.F.R. §1625.2

WHEN REGISTRANT'S CLASSIFICATION MAY BE REOPENED AND CONSIDERED ANEW.

The local board may reopen and consider anew the classification of a registrant (a) upon the written request of the registrant, the government appeal agent, any person who claims to be a dependent of the registrant, or any person who has on file a written request for the current deferment of the registrant in a case involving occupational deferment, if such request is accompanied by written information presenting facts not considered when the registrant was classified, which, if true, would justify a change in the registrant's classification; or (b) upon its own motion if such action is based upon facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification; provided, in either event, the classification of a registrant shall not be reopened after the local board has mailed to such registrant an Order to Report for Induction (SSS Form No. 252) or an Order to Report for Civilian Work and Statement of Employer (SSS Form No. 153) unless the local board first specifically finds there has been a change in the registrant's status resulting from circumstances over which the registrant had no control.

32 C.F.R. §1625.4

REFUSAL TO REOPEN AND CONSIDER

ANEW REGISTRANT'S CLASSIFICATION.

When a registrant files with the local board a written request to reopen and consider anew the registrant's classification and the local board is of the opinion that the information accompanying such request fails to present any facts in addition to those considered when the registrant was classified or, even if new facts are presented, the local board is of the opinion that such facts, if true, would not justify a change in such registrant's classification, it shall not reopen the registrant's classification. In such a case, the local board (a) shall record in the registrant's file the reasons for its decision not to reopen his classification, and (b) shall advise the registrant by letter of its decision not to reopen his classification and the reasons therefor.

32 C.F.R. §1625.11

CLASSIFICATION CONSIDERED ANEW WHEN REOPENED.

When the local board reopens the registrant's classification, it shall consider the new information which it has received and shall again classify the registrant in the same manner as if he had never before been classified. Such classification shall be and have the effect of a new and original classification even though the registrant is again placed in the class that he

was in before his classification was reopened.

32 C.F.R. §1625.12

NOTICE OF ACTION WHEN CLASSIFICATION CONSIDERED ANEW.

When the local board reopens the registrant's classification, it shall, as soon as practicable after it has again classified the registrant, mail him notice thereof.

32 C.F.R. §1625.13

RIGHT OF APPEAL FOLLOWING REOPENING OF CLASSIFICATION.

Each such classification shall be followed by the same right of appearance before the local board and the same right of appeal as in the case of an original classification.

32 C.F.R. §1625.14

CANCELLATION OF ORDER TO REPORT FOR INDUCTION OR FOR ALTERNATE SERVICE BY REOPENING OF CLASSIFICATION.

The reopening of the classification of a registrant by the local board shall cancel any order to report for induction or alternate service which may have been issued to the registrant, except that if the registrant has failed to comply with either of those orders, the reopening of his classification thereafter by the local board for

the purpose of placing him in Class 4-C shall not cancel the order with which he failed to comply.

APPENDIX C

Army Regulation 635-20, August 20, 1970

3.b. Federal courts have held that a claim to exemption from military service under Selective Service laws must be interposed prior to notice of induction, and failure to make timely claim for exemption constitutes waiver of the right to claim. However, claims based on conscientious objection growing out of experiences prior to entering military service, but which did not become fixed until entry into the service, will be considered. Requests for discharge after entering military service will not be favorably considered when-

(1) Based on conscientious objection which existed, but which was not claimed prior to notice of induction, enlistment or appointment.

(2) Based solely on conscientious objection claimed and denied by the Selective Service System prior to induction.

(3) Based solely upon considerations of policy, pragmation or expediency.

(4) Based on objection to a particular war.

APPENDIX D

Department of Defense Directive No. 1300.6, May 10, 1968

B. DOD Policy. Consistent with this national policy, bona fide conscientous objection as set forth in this Directive by persons who are members of the Armed Forces will be recognized to the extent practicable and equitable. Objection to a particular war will not be recognized. This policy will be executed subject to the following:

. . .

2. A request for discharge after entering military service based solely on conscientious objection which existed but was not claimed prior to induction or enlistment cannot be entertained. Similarly, requests for discharge based solely on conscientious objection claimed and denied by the Selective Service System prior to induction cannot be entertained. This accords with Federal court holdings that a claim to exemption from military service under the Selective Service laws must be interposed prior to notice of induction and failure to make timely claim for exemption constitutes waiver of the right to claim. However, claims based on conscientious objection growing out of experiences prior to entering military service, but which did not become fixed until entry into the service, will be considered.